

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3596 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
OM PRAKASH ,PROPRIETOR,

Versus

MR.RAJAN RAMLAL TALWA AND ANR

-----  
Appearance:

MR NAGIN N GANDHI for Petitioner  
MR DD VYAS for Respondent No. 1  
PUBLIC PROSECUTOR for Respondent No. 2

-----  
CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 06/09/96

ORAL JUDGMENT :

Om Prakash, Proprietor of 'Om Prakash & Sons' the original accused, by this Mis.Criminal Application under section 482 of the Code of Criminal Procedure, Code, 1973, has moved this court inter alia praying for quashing and setting aside the proceedings instituted on the basis of the complaint filed by the opponent no-1 Rajan Ramlal Talwar - same being Criminal Case No.6693/89 under section 138 of the Negotiable Instruments Act, 1881.

2. Perused the complaint. Heard Mr. N.N.Gandhi, learned advocate for the petitioner. On going through the complaint, it can not be said that the facts alleged therein do not constitute an offence. However, Mr.Gandhi submitted that the endorsement 'refer to the drawer' does not fall within the purview of section 138 of the said Act. Of course, Mr.Gandhi was fair enough to invite the attention of this court to the decision of this court rendered in the case of M/S DADA SILK MILLS & ORS> VS INDIAN OVERSEAS BANK & BANKING CO., reported in 1995 (1) GLH, 458, wherein this court has rejected the same and similar contention as is raised by Mr.Gandhi in the present case. Mr.Gandhi submitted that this requires reconsideration. I have carefully gone through the well-reasoned judgment of this court (Coram : S.D.Shah J) and do not find anything on the basis of which the said judgment requires to be referred to the Division Bench. It is rightly held by in the aforesaid judgment that - "Dishonour of cheque due to insufficiency of funds or due to amount of the cheque exceeding the amount arranged to be paid, are not the only two contingencies specified to attract penal liability. Such an interpretation would frustrate the object of enacting legal provision. Wherever cheques are dishonoured on account of insufficiency of funds either with endorsement "Refer to drawer" or "insufficiency of fund" or "account closed" or "payment stopped" the provisions of section 138 of the Act would be attracted.". Justice Shah was right on observing that - "the object and scheme of the Act must be construed in the letter and spirit of the Act". In this view of the matter, there being no substance in the matter, this application deserves to be dismissed.

3. In the result, this application fails and is dismissed. Interim relief granted earlier stands vacated. Taking into consideration the facts of the case that the case is of the year 1989, the trial court is directed to give a top-most priority to it and decide the

same preferably on or before 31-8-1997. The trial court,  
after receipt of this order, will report to this court  
the date of commencement as well as termination of the  
trial.

....